2012/06

filed on 8.5.06

by Shri A. K. Paul Advocate

8/5/06

R. to D. R. (J)

(3)

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

Cr.R. No. 282 /2006

APPLICANT ACCUSED : Deodhar Kumar Sahu s/o Hiraman Singh Sahu, age 36 years, r/o Paanch Rasta, Behind Lal Bahadur Hospital, Supela, P.S. Supela, District Durg, Chhattisgarh.

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V E R S U S

NON-APPLICANT PROSECUTION : The State of Chhattisgarh,

CRIMINAL REVISION UNDER SECTION 397/401 OF THE CODE OF CRIMINAL PROCEDURE.

XI-HC-22

(88)

A.F.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.Rev. 282/2006 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

04/05/2006

Shri A.K. Prasad, learned counsel for the applicant.

Shri R.K. Sharma, PL for State/respondent.

Heard on I.A. No. 1107/2006 for urgent hearing. The matter is taken up on Board.

Learned counsel for the applicant submits that he does not press M.Cr.P. No. 967/2006 for stay and prays that this revision be heard finally at the stage of admission today.

Prayer is not opposed.

M.Cr.P. No. 967/2006 is dismissed as not pressed.

This revision is heard finally today at the stage of admission.

The applicant is aggrieved by an order dated 3.4.2006 passed by the 4th Addl. Sessions Judge, Distt. Durg in Sessions Trial No. 6/2005 whereby a charge under Section 304 Part-II of IPC was framed against the applicant.

The factual matrix in brief is that the applicant is an R.M.P.E.H (Rural Medical Practitioner of Electro Homeopathy) and possesses a certificate from the council of Electro Homeopathic System of Medicine. The applicant is registered in the Electro Homeopathic system of Medicine and also possesses a degree of Vaidya Visharad. Mrs. Shyama Gupta was taking treatment from the applicant for fever. On 7.10.2003, Mrs. Shyama Gupta, accompanied by her mother-in-law went to the clinic of the applicant for treatment since the medicines being administered by the applicant were not responding and she would get fever everyday in the evening. The applicant examined Mrs. Shyama Gupta at the clinic and administered injections of antibiotic drug Ciprofloxain and Cortico Steroid

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drug Dexamethasone Phospate. Soon thereafter, the condition of Mrs. Shyama Gupta deteriorated. The applicant immediately telephoned her husband Om Prakash Gupta informing that Mrs. Shyama Gupta had fainted at the clinic after he had administered an injection and put her on a drip. Om Prakash Gupta rushed to the clinic of the applicant and took Mrs. Shyama Gupta to the Revival Nursing Home in a rickshaw where the doctor proclaimed her dead. F.I.R. was lodged at P.S. Chavni on the same day at 9.10 p.m. Post mortem was conducted by a team of doctors who could not give any definite opinion as to the cause of death of Mrs. Shyama Gupta. Viscera and skin flaps were preserved for chemical analysis and Histo Pathological examination. On being sent for chemical analysis to the FSL, the Senior Scientific Officer of the State FSL, Raipur opined that the skin flap contained Cortico Steroid drug Dexamethasone. It was further opined that the injection syringe and the empty bottle and the disposable syringe contained antibiotic Ciprofloxain and did not contain any chemical poison. The certificate of registration in Electro Homeopathic System of Medicine as also the certificate of R.M.P.E.H and a degree of Vaidya Visharad were seized from the applicant. After completion of investigation, the applicant was prosecuted under Section 304 IPC. The learned trial Judge after considering the material produced by the prosecution framed a charge under Section 304 Part-II IPC against the applicant.

Shri A.K. Prasad, learned counsel for the applicant has assailed the impugned order on the ground that even if the entire material produced by the prosecution is accepted at its face value, it would not reveal even *prima facie a* case under Section 304 Part-II of IPC against the applicant. He contended that the applicant was a Registered Medical Practitioner and was

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entitled to keep and administer allopathic medicines by virtue of his degree and registration as an R.M.P.E.H. Reliance was placed on *Jacob Mathew Vs. State of Punjab and another* reported in 2005 CG. Cr.J. 294 (SC) and a decision rendered by this Court in *Dr. Arun Dewangan Vs. State of Chhattisgarh* reported in 2006 CG. Cr. J. 92. It was also contended that the autopsy report did not express any definite opinion as to the cause of death and the report of the FSL also revealed that there was no chemical poison in the drugs administered by the applicant to Mrs. Shayama Gupta. It was submitted that at the most the material produced by the prosecution could *prima facie* reveal a case under Section 304-A of the IPC against the applicant. On the other hand, Shri Rama Krishna Sharma, learned Panel Lawyer for State argued in support of the impugned order while contending that the applicant was not authorized to administer allopathic medicine.

Having considered the rival submissions, I have perused the documents produced by the prosecution under Section 173 Cr.P.C. The F.I.R. lodged by Om Prakash Gupta reveals that Mrs. Shyama Gupta was already taking treatment for fever from the applicant. The documents Annexure A-2 and A-3 also show that the applicant holds a degree of Vaidya Visharad and was also registered as R.M.P.E.H. and possessed a certificate from the council for Electro Homeopathic System of Medicine for practicing Electro Homeopathy. Annexure A-4 also shows that the Apex Court has in criminal appeal No. 369/1994 held that a Registered Medical Practitioner is entitled to keep Allopathic medicine by virtue of his degree and registration. There is absolutely no material on record to show that the medicines administered by the applicant to Mrs. Shyama Gupta could have caused the death of Mrs. Shyama Gupta. There is no expert

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opinion on record to that affect. Autopsy report also does not express any definite opinion about the cause of death. The report of FSL also shows that there is no chemical poison in the drugs administered by the applicant to Mrs. Shyama Gupta.

From the material produced by the prosecution, it cannot be said that while administering Cortico Steroid drug and the antibiotic injection of Ciprofloxain to Mrs. Shyama Gupta, the applicant had the knowledge that it was likely to cause her death. In that view of the matter, it can, at the most, be said that the applicant was negligent in administering the above mentioned drugs to Mrs. Shyama Gupta. A Cortico Steroid drug is a life saving drug and administered as an S.O.S to save the life of a sinking patient. Mrs. Shyama Gupta was administered the Ciprofloxain antibiotic injection by the appellant without undertaking a sensitivity test. In the facts and circumstances of the case and on the basis of the material produced by the prosecution, I am of the considered opinion that no case under Section 304 Part-II exists even *prima facie* against the applicant. However, a case under Section 304-A of the IPC for causing death by negligence is *prima facie* seen against the appellant in this case.

For the aforesaid reasons, it can be said that the impugned order is manifestly erroneous and contrary to law and calls for interference in exercise of the revisional jurisdiction.

In the result, this criminal revision is partly allowed. Charge under Section 304 Part-II IPC framed against the applicant by the learned trial Judge on 3.4.2006 is set aside. The learned trial Judge shall frame a charge under Section 304-A IPC against the applicant and thereafter proceed in accordance with law.

Sd-/
Dilip Raosaheb Deshmukh
Judge

6-5-06
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